

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BABCOCK BORSIG POWER GmbH,)
Plaintiff,)
)
v.)
)
BABCOCK POWER, INC.,)
Defendant and Third-Party Plaintiff,)
)
v.)
)
BABCOCK BORSIG, AG)
Third-Party Defendant.)
_____)

C.A. No. 04 CV 10825-RWZ

**PLAINTIFF'S ASSENTED TO MOTION FOR LEAVE
TO AMEND COMPLAINT**

Pursuant to Fed. R. Civ. P. 15(a), Plaintiff Babcock Borsig Power GmbH ("BBP") hereby move for leave to amend their Complaint against Defendant Babcock Power Inc. ("BPI"), which has assented to this Motion. In support of its Motion, BBP states the following:

1. Babcock filed its original complaint in this matter on April 26, 2004.
2. BPI filed an answer and Counterclaim against BBP and Third-Party Defendant Babcock Borsig AG on July 15, 2004 and September 15, 2004, respectively.
3. Since the filing of the Complaint and Counterclaim, another dispute between the parties has arisen concerning two Promissory Notes from BPI to BBP. These Notes were executed contemporaneously with the Stock Purchase Agreement and Non-Competition Agreement that are the subject of the parties' claims and counterclaim.
4. By this Motion, BBP seeks to add a claim against BPI for its breach of its payment obligations under the Promissory Notes. BBP provided BPI with written notice of its default, as

required, and also provided the requisite opportunity to cure. BPI did not cure its breach within the specified time period and has stated its intention not to pay the principal and interest that es is immediately due under the Notes' acceleration provisions.

5. BBP's new claim for breach of the Promissory Notes arises from the same nucleus of operative fact as its claims in the original Complaint.

6. The parties have just commenced the discovery process. Neither party has yet responded to discovery requests.

7. BPI, by its counsel, has indicated its assent to BBP's Motion.

8. The interests of judicial economy will be served by granting BBP leave to amend, which will obviate the need to file a separate lawsuit in this or another court.

WHEREFORE, BBP respectfully requests that the Court grant it leave to amend its Complaint so that it may file and serve the First Amended Complaint that is attached as Exhibit 1.

Respectfully submitted,

BABCOCK BORSIG POWER GmbH, and

BABCOCK BORSIG, AG,

By Their Counsel,



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Dated: December 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by (hand) (mail) on December 20, 2004

